

Senate Bill 321

By: Senators Pearson of the 51st, Williams of the 19th, Rogers of the 21st, Tolleson of the 20th, Mullis of the 53rd and others

AS PASSED SENATE

A BILL TO BE ENTITLED

AN ACT

To amend Article 6 of Chapter 5 of Title 12 of the Official Code of Georgia Annotated, relating to water supply, so as to provide for private operation or ownership of new public water facilities in certain cases; to provide for requests for proposals for projects; to provide for reimbursement of project advancement costs; to provide for an evaluation process; to provide for awards; to provide conditions and restrictions; to provide for rules and regulations; to provide a short title; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

This Act shall be known and may be cited as the "Georgia Public-Private Water Facility and Supply Act of 2010."

SECTION 2.

Article 6 of Chapter 5 of Title 12 of the Official Code of Georgia Annotated, relating to water supply, is amended by adding a new Code section to read as follows:

"12-5-476.2.

(a) As used in this Code section, the term 'water facility' means a supply or recapture reservoir, well, collection and distribution system, water transportation system, and any other facility for the impoundment, collection, or distribution of water for public use.

(b) The division or any county, municipality, or local water authority may enter into a reservoir use or water supply agreement with the owner of any private water facility. Any contracts entered into pursuant to this subsection may include user fees for use of the project or water supplied thereby.

(c)(1) After identifying any site as feasible for a water facility pursuant to subsection (c) of Code Section 12-5-472, the division may evaluate a potential project for such site to determine, in the judgment of the division, appropriate or desirable levels of state, local, or private participation in such project for purposes of supplying water to the division or

any county, municipality, or local water authority for resale. In making such determination, the division shall be authorized and encouraged to seek the advice and input of the affected local governing authorities, local water authorities, and the private financial and construction sectors.

(2) For any project for which private ownership of a new water facility is determined by the division to be feasible and appropriate for purposes of supplying water to the division or any county, municipality, or local water authority for resale, the division may perform management, technical, consultative, training, educational, and other project development and promotion activities, subject to availability of funds from the Georgia Reservoir Fund established by Code Section 50-23-28 and the requirement that the division be fully compensated by the private owner of the water facility for such expenditures. All such compensation paid to the division shall be deposited in such fund.

(3) For any project for which private operation or ownership of a new water facility is determined by the division to be feasible and appropriate for purposes of supplying water to the division or any county, municipality, or local water authority for resale, the division, for itself or for any interested local governing authority or local water authority which has requested the division to act in its behalf, may issue a written request for proposals indicating in general terms the scope of the project and the factors that will be used in evaluating the proposals and containing or incorporating by reference other applicable contractual terms and conditions, including any unique capabilities or qualifications that will be required of the contractor. Public notice of such request for proposals shall be made at least 90 days prior to the date set for receipt of proposals by posting the legal notice on a single website that shall be procured and maintained for such purposes by the Department of Administrative Services or in substantially the same manner utilized by the division to solicit requests for proposals.

(4) Upon receipt of a proposal or proposals responsive to the request for proposals, the division shall accept written public comment, solicited in the same manner as provided for notice of proposals, for a period of 30 days beginning at least ten days after the date set for receipt of proposals. In addition, the division shall hold at least one public hearing on such proposals not later than the conclusion of the period for public comment.

(5) In the event the division receives more than one proposal, the division shall engage in individual discussions with two or more respondents deemed fully qualified, responsible, and suitable on the basis of initial responses and with emphasis on professional competence and ability to meet the level of private financial participation called for by the division. Repetitive informal interviews shall be permissible. In the event that any county, municipality, or local water authority is a potential customer of a project that is to be privately owned or operated, a representative of such local

government entity, appointed by the same, may participate in such discussions and interviews. At the discussion stage, the division may discuss estimates of total project costs, including, but not limited to, nonbinding estimates of price for services. Proprietary information from competing respondents shall not be disclosed to the public or to competitors and shall not be subject to the provisions of Code Section 50-18-70. At the conclusion of such discussions, on the basis of evaluation factors published in the request for proposal and all information developed in the selection process, the division, with the input of any participating local governing authority or local water authority, shall select in the order of preference two or more respondents whose qualifications and proposed services are deemed most meritorious. Negotiations shall then be conducted with two or more respondents and with the participation of the designated representative of any participating local governing authority or local water authority. The director shall select the respondent who shall implement the project based upon contract terms that are the most satisfactory and advantageous to the division based upon a thorough assessment of value and the ability of the final project's characteristics to further the goals of regional and state-wide water management plans prepared pursuant to Article 8 of this chapter. Before making such selection, the director shall consult with any and all interested local governing authorities or local water authorities. Notwithstanding the foregoing, if the terms and conditions for multiple awards are included in the request for proposal, the director may award contracts to more than one respondent. Should the director determine in writing and in his or her sole discretion that only one respondent is fully qualified, or that one respondent is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that respondent.

(d)(1) If the division or any county, municipality, or local water authority receives an unsolicited proposal from a private entity for a project for purposes of supplying water to the division or any county, municipality, or local water authority for resale, the division may evaluate the proposed site to determine if such site is feasible for a water facility pursuant to subsection (c) of Code Section 12-5-472.

(2) For any project for which private operation or ownership of a new water facility is determined by the division to be feasible and appropriate for purposes of supplying water to the division or any county, municipality, or local water authority for resale, the division may evaluate such proposed project to determine, in the judgment of the division, appropriate or desirable levels of state, local, or private participation in such project. In making such determination, the division shall be authorized and encouraged to seek the advice and input of the affected local governing authorities, local water authorities, and the private financial and construction sectors.

(3) In determining whether a project involving private ownership of a new water facility is feasible and appropriate for purposes of supplying water to the division or any county, municipality, or local water authority for resale, the division may perform management, technical, consultative, training, educational, and other project development and promotion activities, subject to availability of funds from the Georgia Reservoir Fund established by Code Section 50-23-28 and the requirement that the division be fully compensated by the private owner of the water facility for such expenditures. All such compensation paid to the division shall be deposited in such fund.

(4) If appropriate after the considerations stated in paragraphs (2) and (3) of this subsection, the division shall negotiate terms with the private entity which made the proposal with the participation of the designated representative of any participating local governing authority or local water authority. The division shall not solicit additional proposals, but it shall consider any concurrent projects affecting the same area under subsection (c) of this Code section in determining whether to award a contract under this subsection. The director shall negotiate contract terms that are the most satisfactory and advantageous to the division based upon a thorough assessment of value and the ability of the final project's characteristics to further the goals of regional and state-wide water management plans prepared pursuant to Article 8 of this chapter. Before making a final approval of such proposal, the director shall consult with any and all interested local governing authorities or local water authorities.

(5) Should the director determine in writing that:

(A) The proposed site is feasible for a water facility;

(B) The levels of state, local, or private participation in such project are appropriate or desirable;

(C) The terms negotiated with the private entity are satisfactory and advantageous to the division; and

(D) The private entity making the proposal is fully qualified,

then the director or any county, municipality, or local or regional water authority may enter into a contract with such party. Such findings shall be made in writing and the reasons for each such findings shall be fully and thoroughly documented with technical and financial data.

(e) Nothing in this Code section shall require the division to continue negotiations or discussions arising out of any request for proposal.

(f) The authority may promulgate reasonable rules or regulations to assist in the division's evaluation of the proposal and to implement this Code section.

(g) No employee, officer, or member of the division, the authority, the department, Board of Natural Resources, any local governing authority, or any local water authority shall

serve as an agent, lobbyist, or board member for any entity directly or indirectly under contract with or negotiating a contract with the division under this Code section for one year after leaving his or her position as such an employee, officer, or member.

(h) The director shall be authorized to delegate such duties and responsibilities under this Code section as he or she deems appropriate from time to time; provided, however, that the final approval of contracts provided for in this Code section shall be by action of the director.

(i) The power of eminent domain shall not be delegated to any private entity with respect to any project commenced or proposed pursuant to this Code section, nor shall any property taken through the exercise of the power of eminent domain be conveyed or leased to a private entity.

(j) Any water facility approved pursuant to this Code section shall, as a condition of such approval, be submitted to the governing authority of each county and municipal corporation within which the facility is wholly or partially located and shall be included in the service delivery strategy agreement required by Article 2 of Chapter 70 of Title 36. Without such approval and inclusion the facility shall not be approved."

SECTION 3.

All laws and parts of laws in conflict with this Act are repealed.